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**DISTRICT ATTORNEYS COUNCIL**

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June 16, 2011

Honorable Mary Fallin  
Governor  
State of Oklahoma  
212 State Capitol Building  
2300 North Lincoln Blvd  
Oklahoma City, OK 73105

Re: Commutation and Subsequent Parole of Inmate Serving Sentence of Life Imprisonment Without Parole

Dear Governor Fallin:

The District Attorneys Council (DAC) was alerted to an issue under consideration by the Pardon and Parole Board. Specifically, Currie Ballard, one of the new appointees on the Board, has requested an inmate sentenced to life imprisonment without the possibility of parole (LWOP) be brought before the board for possible commutation of his sentence and subsequent parole. The inmate in question was convicted of Trafficking after Former Conviction of five felonies. It is my understanding the Board voted 3 to 2 at a recent meeting to consider the process for such a recommendation at its next meeting June 21<sup>st</sup>. If such procedures are adopted, the inmate's case will be heard at the Board's August meeting.

It should first be noted that the offense of Trafficking after Former Conviction of Two or More Felonies carries a mandatory sentence of LWOP. 63 O.S. § 2-415(D)(3). Though some may consider it harsh, a mandatory sentence of life without parole in these cases has been found to be neither cruel nor unusual punishment within the meaning of the Federal and State Constitutions. See *Randolph v. State*, 2010 OK CR 2, ¶ 34, 231 P.3d 672 (2010). If the Pardon and Parole Board finds this mandatory sentence to be excessive in these types of cases, this is an issue for the legislature. Resolution should not be sought through the pardon and parole system.

Furthermore, pursuant to Article 6, Section 10 of the Oklahoma Constitution, the Pardon and Parole Board does not have the authority to make recommendations regarding parole for convicts sentenced to death or sentenced to LWOP. See also 57 O.S. § 332.7(2). However, these provisions do not prohibit the Pardon and Parole Board from recommending commutation of such a sentence. See OK Const. Art. 6, § 10, 57 O.S. § 332. A commutation of sentence is a substitution of a lesser punishment for a greater. A commuted sentence has the same legal effect as though the sentence had originally been for the commuted term. *Ex parte Warren*, 1928 OK CR 125, 39 Okla.Crim. 348, 353, 265 P. 656. Consequently, if an inmate's LWOP sentence is commuted then arguably he or she would be eligible for parole.

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As you are aware, upon favorable recommendation by the Pardon and Parole Board, the Governor has the exclusive power to commute sentences. *Wright v. State*, 1966 OK CR 61, ¶ 15, 414 P.2d 570. The recommendation of the Pardon and Parole Board is advisory only. *Application of Cooley*, 1956 OK CR 3B, ¶ 9, 295 P.2d B16. While the judicial power to modify a judgment and sentence is an award of justice, the act of the chief executive is an act of grace. *Hall v. State*, 7B Okl.Cr. 3B9, 395-396, 1944 OK CR 43, 149 P.2d 268.


As precisely articulated in *Hall* at 78 Okl.Cr. 3B9, 396, "[c]ommutation is a matter of discretion and may be refused. Justice is imperative, and must not be denied." Such a recommendation from the Pardon and Parole Board could set a precedent that over time would likely erode the meaning of life without parole, undermining and diluting the sentencing option of life without the possibility of parole. As recognized by Judge Lumpkin in his concurring opinion in *Littlejohn v. State*, 2004 OK CR 6, ¶ 2, B5 P.3d 2B7, diluting the meaning of life without the possibility of parole will lead to a "slippery slope of half truths" which will undermine the justice system. Specifically, the practice of commuting LWOP sentences would directly affect plea negotiations and the advice and counsel routinely provided to victim's families. When discussing possible plea options with victim's families in first degree murder cases, families are routinely counseled that LWOP means LWOP. Prosecutors will no longer be able to in good conscience provide such assurances. Consequently, more death penalty cases will likely go to trial due to the uncertainties related to a sentence of life without parole.

Moreover, the Court of Criminal Appeals in *Littlejohn*, 2004 OK CR 6 at ¶ 11, directs how juries are to be instructed regarding the meaning of life without the possibility of parole. Erosion of the meaning will likely necessitate the Court revisit this issue yet again.

The *Littlejohn* Court notes the frequency in which juries inquire about the meaning of LWOP. *Id.* at ¶ 9. Clearly, juries, victims' families, and prosecutors, and even the public are all seeking the same assurance ... that life without parole truly means life without parole. Should the Pardon and Parole Board make such a recommendation to you, the Council respectfully urges the Governor's office to carefully scrutinize any such recommendation, reserving the power to commute for only those cases in which justice demands such action.

Your attention and thoughtful consideration of this issue is greatly appreciated. Please do not hesitate to contact me if I can be of any assistance to you.

Very truly yours,

  
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Executive Coordinator

cc: John Wampler, Chair, District Attorneys Council  
Mike Fields, District Attorney, District Four  
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Attorney General Scott Pruitt  
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